

H.R. 3964, THE SACRAMENTO-SAN JOAQUIN VALLEY EMERGENCY WATER DELIVERY ACT

“(This) bill falsely holds the promise of water relief that cannot be delivered because in this drought, the water simply does not exist.”

-John Laird, Secretary of Natural Resources, State of California

H.R. 3964 was introduced by Congressmen Valadao and the Republican Members of the California Delegation. This legislation repeals existing law regarding the use of water in California and reallocates the water in a way that elevates junior water rights above all other water needs, including municipal, fisheries and environmental uses. If enacted, H.R. 3964 would set an unprecedented standard of state preemption, environmental disregard, and the privatization of a public resource for the benefit of a select few. **This legislation creates no new water.**

There have been nearly three dozen letters in opposition to a previous iteration of this bill (H.R. 1837). While H.R. 3964 varies slightly in several provisions, section 108 a-b, which repeals states’ rights, remains the same. The State of California has come out in strong opposition to this legislation.

What H.R. 3964 Means for the Nation:

- Would set a dangerous precedent of preempting state water rights, leaving other states vulnerable to this kind of federal infringement.

What H.R. 3964 Means for Other States

(CA, AZ, NV, CO, NM, WY, UT, ID, TX, OK, NB, KS, SD, ND, MT, WA, OR)

- Would **preempt California State law** (Section 108(a)).
- Would override the century-long legacy whereby the Bureau of Reclamation respects each state’s legal ability to control, appropriate, use, or distribute irrigation water.
- More than three dozen letters from stakeholders in opposition to the legislation, including from the non-partisan **Western States Water Council and the States of Colorado, Wyoming, and Oregon have been received on similar legislation (H.R. 1837).**

What H.R. 3964 Means for California:

- Would prohibit California from adhering to its own water code and State Constitution when managing its water resources (Section 108(b)).
- Would cause more legal uncertainty for the affected communities, not less. Title II of H.R. 3964 would severely impact the court-ordered, legally binding San Joaquin Restoration Settlement Act. Proponents of this title are not party to the Settlement.
- Would revert contract renewal terms to 40 years (instead of 25). (Section 103)
- Would deem that all requirements of the Endangered Species Act (ESA) in the operation of the Central Valley Project would be met through the 1994 Bay Delta Accord. This ignores the last twenty years of best available science demonstrating the negative effects on species. (Section 108)

SECTION-BY-SECTION ANALYSIS

Title I makes several amendments to the Central Valley Improvement Act, specifically:

- Amending the definition of anadromous fish to remove American Shad and Striped Bass. Legislation also limits protection of salmon and steelhead stocks to those that were present in 1992. (Section 102)
- Extends contracts for 40 years, waives the requirement that an EIS be completed prior to renewal, and upon conversion to repayment contract, contractors only pay for water received. (Section 103). Expedites environmental review for water transfers and gives 45 days for the Secretary to approve transfers. (Section 104)
- Waives measurement requirement for large water districts and strikes the tiered pricing for water use. Striking this section removes conservation efforts put in place by CVPIA. (Section 104)
- Creates a ceiling for environmental flows (i.e. (b)2 water) of 800,000 acre-feet, removes consultation of in stream flows with the state, and deletes the word “primary” thus putting fish, wildlife, and habitat restoration as a secondary purpose. (Section 105)
- Removes funding for environmental purposes in the Restoration Fund, deems environmental mitigation complete by December 31, 2020, and directs the funding for water supply projects like new storage. (Section 106)
- Directs that the CVP and SWP be operated according to the 1994 Bay Delta Accord, and “such operations shall proceed without regard to the ESA or any other law.” (Section 108(a))
- Prohibits federal or state imposition of any condition restricting the exercise of valid water rights in order to conserve, enhance, recover, or otherwise protect any species that is affected by operations of the CVP or SWP, or protect any "public trust value" pursuant to the "Public Trust Doctrine." (Section 108 (b))
- Preempts state-set size limit on non-native species, (section 108) and creates a pilot program for the elimination of non-native species (Section 114). Mandates that hatchery fish be included in making determinations regarding anadromous fish covered by under the ESA. (Section 109)
- Expands the CVP service area to cover a portion of Kettleman City. (Section 110). Mandates Reclamation enter into Warren Act Contracts with Oakdale, South San Joaquin, and CCWD (Section 112-113).
- Allows compliance under the California Environmental Quality Act to suffice for compliance with NEPA (Section 111). Requires that Reclamation honor rescheduled water (Section 115).

Title II directs the Secretary to cease implementation of the San Joaquin River Restoration Settlement Agreement, which is the foundation of the San Joaquin River Restoration Settlement Act (SJRRS).

Title III directs the Secretary of the Interior, to convert willing water service contracts to repayment contracts and allow for accelerated repayment of project capital costs. (used as offset for bill).

Title IV outlines water rights protections for those with water rights senior to the CVP, including Sacramento River Valley contractors and addresses shortage policy for certain north-of-Delta CVP water service contracts.

Title V declares that the unique circumstances of coordinated operations of the CVP and SWP "require assertion of Federal supremacy to protect existing water rights throughout the system" and that as such shall not set precedent in any other state. This section also includes a provision amending a Wild and Scenic Designation on the Merced River for the purposes of increasing capacity at the Exchequer Project.